IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 180 of 1999

with

SPECIAL CIVIL APPLICATION No 181 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJUSINGH M JHALA

Versus

DIST.DEVELOPMENT OFFICER GANDHINAGAR

Appearance:

1. Special Civil Application No. 180, 181 of 1999

MR MUKESH R SHAH for Petitioner No. 1

MR MAYANK VORA for Respondent No. 1-2

MR KL PANDYA ASSTT GOVT PLEADER for Respondent No. 3,3

RULE SERVED for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 06/09/2003

COMMON ORAL JUDGEMENT

#. Heard learned advocate Mr.M.R.Shah on behalf of the petitioners and learned AGP Mr.K.L.Pandya for respondent Nos.3 & 4, so also, the learned advocate Mr.Mayank Vora for respondent Nos.1 & 2.

#. The brief facts giving rise to these two petitions are as under.

The petitioners were working as the Superior Field Worker in the Gandhinagar District Panchayat since 1984. The Government Resolution dated 26th December, 1995 issued wherein, the Superior Field Worker is eligible for the purpose of Multi Purpose Health Worker who has completed ten years service as Superior Field Worker and who has passed SSC Examination and who is not more than 40 years age as on date 1.1.1991. On 27th January, 1997, the applications were invited by the District Panchayat Service Selection Committee, Gandhinagar inviting applications for the post of Multi Purpose Health Worker and as per the said advertisement Superior Field Worker who has passed S.S.C. Examination and who is working as Superior Field Worker for more than ten years and less than 40 years age on date 1.1.1991 was also considered for the post of Multi Purpose Health Worker. Pursuant to the said application who was eligible as per the said advertisement has applied for the post of Multi Purpose Health Worker and thereafter the petitioner was called for interview by the District Panchayat Service Selection Committee on date 14th October, 1997 and there after both the petitioners were selected and accordingly given appointment order by order dated 9th march, 1998. But thereafter, all of sudden, on 6th January, 1999 the appointment of the petitioners came to be cancelled on the basis of the letter / order passed by the respondent No.3 dated 26th December, 1998 on the ground that the petitioners have not passed training of Multi Purpose Health Worker and resultantly, the appointment orders issued in favour of the petitioners came to be cancelled without giving a reasonable opportunity of hearing to the petitioner and therefore, the orders cancelling the appointment orders is under challenge in both these petitions.

#. I have considered submissions of the learned advocates for the parties and also have also gone through the averments and material produced on the record of these two petitions. The impugned order dated 6th January, 1999 in respect of both the petitioner

respectively, is produced on page.32 at Annexure-G to the petition. This Court has perused the orders passed by the respondents. It also transpires that the impugned orders seem to have passed on the basis of the instructions having been received from the respondent No.3 and resultantly, the appointment order has been cancelled only on the ground that both the petitioners have not completed one year training for the post of Multi Purpose Health Worker and therefore, their service came to be terminated.

#. Learned advocate Mr.M.R.Shah has submitted that initially this Court has issued Notice on 12th January, 1999 making it returnable on 16th February, 1999 and also granted interim relief in terms of para-10[C] and thereby protected services of both the petitioners. Ultimately, the interim relief remained continued upto the time of issuance of Rule and this Court has passed the order continuing the interim relief till further order vide order dated 4th August, 1999. Therefore, learned advocate Mr.Shah submits that both the petitioners are presently working in the post of Multi Purpose Health Workers.

#. However, learned advocate Mr.Shah has also submitted that these orders dated 6th January, 1999 has been passed by the respondent authority without giving any reasonable opportunity of hearing to the petitioners and therefore, it is contrary to the principle of natural justice. He also submitted that if any adverse orders passed by the respondents having adverse civil consequences which could affect adversly the prestige and status of the employee, then also, prior to passing of such orders, reasonable opportunity must be given by the employer to the concerned employee which is undisputedly not given by the respondents to the petitioner before passing the impugned orders on date 6th January, 1999. He also submitted that this ground is sufficient before this Court to set aside the order of cancellation of appointment of both the petitioners dated 6th January, 1999.

#. Learned AGP Mr.K.L.Pandya for the respondent State Authority has submitted that affidavit-in-reply has been filed by the respondents. This Court has gone through the record of both these petitions but as such, no such affidavit is found on the record of the case. Apart from this fact, it is his submissions that both the petitioners are not qualified for the post of Multi Purpose Health Workers and they came to be appointed by the orders which is erroneous in nature issued in favour of the petitioners. It is also contended that the nature

of work which requires to be performed by the Multi Purpose Health Worker is different and therefore, according to him, there are degree of responsibility of the post of Multi Purpose Health Worker is higher than the post of Superior Field Worker and therefore also the salary is also on higher side in comparison to the Superior Field Worker. Therefore, according to him, training being the condition precedent requires for being appointed on the post of Multi Purpose Health Worker which was not possessed by the petitioners and that is how the orders of termination came to be passed against the petitioners.

#. As against that, learned advocate Mr.M.R.Shah for the petitioners submits that in response to the advertisement, both the petitioners had applied and accordingly they are qualified and even the advertisement also, there was no mention made by the respondent about the training which required to be possessed by the petitioners. He also submitted that according to the Government Resolution dated 26th December, 1995, they are eligible for the post of Multi Purpose Health Worker and accordingly, they were selected and appointment orders were issued in their favour and that orders came to be cancelled without giving any reasonable opportunity of hearing and therefore, both the orders dated 6th January, 1999 require to be quashed and set aside by this Court.

#. I have considered the submissions made by the learned advocates for the parties. It is quite apparent that appointment orders were issued in favour of both the petitioners for the post in question by the respondents but upon having directions from the respondent No.3, the said orders came to be cancelled vide the impugned order dated 6th January, 1999 passed by the respondent without giving any opportunity of hearing to the petitioners. It is very established principle of law that if any adverse orders having civil consequences and also which could adversely affect the status and prestige of the employee, then before passing of the said orders, a reasonable opportunity ought to have been given by the respondents to the employees concerned which is admittedly not given by the respondents and this being the undisputed position between the parties, this Court is inclined to quash and set aside the impugned orders dated 6th January, 1999 on that count only.

#. However, at this stage, this Court would like to refer the observations made by the Apex Court recently on the principle of natural justice in case of BHUPINDER PAL SINGH VERSUS DIRECTOR GENERAL OF CIVIL AVIATION & OTHERS

reported in 2003-II-LLJ page 1032 [August,2003 Issue], the question has been examined by the apex court that in case when any adverse orders are required to be passed against any person having adverse civil consequences against the person and it is also affecting his status and prestige in the employment, then, before passing such adverse order, principles of natural justice must have to be followed, otherwise, order is not sustainable as being in violation of the principles of natural justice. In para 3 of the said decision, it has been observed by the Hon'ble apex court as under:

> " Looking to the assertion made by the appellant that no opportunity was given to him during the investigation or inquiry based on which the order was passed on July 21, 1999 adversely affecting his rights and status in the absence of any counter affidavit denying the same either before the High Court or before this Court, there is no impediment or difficulty in holding that the order dated July 21, 1999 was passed in violation of the principles of natural justice. Even a perusal of the impugned order indicates that no opportunity was given to the appellant. The High Court proceeded on wrong assumption that the second inquiry was not a de novo inquiry. It appears to us that no opportunity was given to the appellant either during the inquiry made for the first time or in the second inquiry. Since the order passed is in clear violation of principles of natural justice, it is unnecessary for us to go into the merits of the other contentions raised. In the normal course, we would have set aside the order giving liberty to the respondent to hold a fresh inquiry. Since the appellant has superannuated and at this length of time, we think it is neither appropriate nor desirable to direct a fresh inquiry."

In view of above observations made by the Apex Court and considering the undisputed facts of the case on hands, both the orders dated 6th January, 1999 passed by the respondents against the petitioners cancelling the appointment on the post of Multi Purpose Health Worker, without giving any reasonable opportunity to the petitioners, are hereby quashed and set aside, only on the ground that the same are violative of principle of natural justice.

In view of above discussion, both these petition succeed and the orders dated 6th January, 1999 passed by the respondents against the petitioners cancelling the appointment on the post of Multi Purpose Health Worker, stand to have quashed and set aside.

Rule, in both these petitions, is made absolute accordingly with no order as to costs.

Date : 6.9.2003 [H.K.Rathod, J.]

#kailash#